

**MINUTES
of the
THIRD MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**August 11-13, 2008
Gallup, New Mexico
Bahasti'ah (Twin Lakes) Chapter, New Mexico
Window Rock, Arizona**

The third meeting of the Indian Affairs Committee for the 2008 interim was called to order by Representative James Roger Madalena, co-chair, at 10:15 a.m. in the rotunda of the McKinley County Courthouse in Gallup, New Mexico.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair (8/11)
Rep. Ray Begaye
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Rep. John Pena
Sen. Lidio G. Rainaldi
Sen. Nancy Rodriguez
Rep. Gloria C. Vaughn

Absent

Sen. Dianna J. Duran
Rep. Justine Fox-Young
Sen. John C. Ryan
Rep. W. C. "Dub" Williams

Advisory Members

Sen. Joseph J. Carraro (8/11, 8/12)
Rep. Ernest H. Chavez
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Sen. David Ulibarri (8/11, 8/12)

Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. Nick L. Salazar
Sen. William E. Sharer

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Chase Van Gorder
Damian Lara
Mark Harben
Aaron Choneska

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Monday, August 11 — McKinley County Courthouse

Welcome

City of Gallup Mayor Harry Mendoza and McKinley County Commissioner Ernest Becenti welcomed the committee to Gallup. Mayor Mendoza presented the committee members with a symbol of the city's hospitality and with commemorative coins.

Implementation of the Indian Education Act — Status Update

Superintendent Ray Arsenault, Gallup-McKinley County School District; Interim Superintendent Bill Noland, Central Consolidated School District; Superintendent Dr. Kaye Peery, Zuni Public School District; and Superintendent Kilino Marquez, Grants-Cibola County School District, presented on the steps taken in each of their respective school districts to implement the Indian Education Act. Superintendent Arsenault highlighted two schools that showed marked improvements for students and indicated those best practices would be duplicated in the other schools. He also presented his district's Indian education plan, including: native language and culture, professional development, curriculum development, systems for continuous improvement, reading and math interventions, bully-proofing and insuring attendance with computerized interventions such as "Parent Link". Superintendent Marquez highlighted his district's support for language programs and parent input and facilitation. The Grants-Cibola County School District has established partnerships with local tribal leaders and the Pueblos of Laguna and Acoma, the Navajo Nation and Native American licensed teachers and educational assistants. Superintendent Peery highlighted her district's Native American members on the board of education, curriculum, class size, language and culture programs, staff of 85 percent to 90 percent Native American, tribal government relationship and parent involvement. Dr. Peery also expressed concern that the school districts are tasked with too many social services that detract from education. Interim Superintendent Noland and Dr. Janette Slowmanchee also presented on the steps central consolidated is taking to implement the Indian Education Act.

The committee expressed concerns on the percentage of New Mexico's estimated graduation rate and the percentage of New Mexico's graduates required to take remedial courses, the practice of issuing certificates of attendance as equivalents for high school diplomas and salaries for Native American teachers and assistants. Upon a motion by Representative Lundstrom, seconded by Representative Pena, the committee approved without objection to request from Secretary of Public Education Dr. Veronica Garcia a summary of the steps each school district with a significant Native American population had taken to address each of the elements of the Indian Education Act.

Payday Lending — Status Update

Thomas Reinheimer, chief executive officer of Veritec Solutions, LLC, gave a summary of the payday loan legislation that passed the legislature in 2007 and illustrated how the payday

lending database operate in New Mexico works on a transaction-by-transaction basis. Mr. Reinheimer highlighted the experiences of other states with similar populations and demographics and indicated that they had about 30 percent of the population engaged in payday loans. New Mexico had about six percent of the population engaged in payday loans. Mr. Reinheimer explained that, in his professional opinion, the missing percentage of borrowers using payday loans in New Mexico is being directed into predatory installment loans not covered by the New Mexico Small Loan Act of 1955 (Small Loan Act).

William J. Verant, director, Financial Institutions Division, Regulation and Licensing Department, gave a status update on payday loans and the effect that the new laws have had on the number and character of payday lenders. He reviewed the provisions of the payday lending statutes that passed the legislature in 2007 and explained what he views as the installment loan loophole that permits some aspects of predatory consumer lending to continue in New Mexico. Mr. Verant indicated that the current moratorium on licensing new lenders pursuant to the Small Loan Act would soon be lifted.

Karen J. Meyers, assistant attorney general and director of the Consumer Protection Division, reviewed the history of complaints since the effective date of the 2007 payday lending legislation. She agreed that payday lenders appear to be steering customers into relatively unregulated installment loans with extremely high interest rates. There also appear to have been instances where payday lenders may not have complied with the new payday lending laws and rules.

Following questions and discussion by committee members, upon motion by Representative Lundstrom, seconded by Representative Madalena, the committee voted without objection to write a letter to Mr. Verant requesting that the moratorium on the licensing of new payday lenders not be lifted. Upon motion by Representative Lundstrom, seconded by Representative Vaughn, the committee voted without objection to write a letter to Mr. Verant and the attorney general inquiring about their ability to track payday lending via the Veritec database and prosecute payday lenders who are improperly converting payday loans into unregulated installment loans and further request that they provide proposed regulations or statutory revisions at or before the committee's November meeting. Upon motion by Representative Madalena, seconded by Representative Vaughn, the committee voted without objection to write a letter to Mr. Verant and the attorney general inquiring about the need to raise the limit of loans pursuant to the Small Loan Act above \$2,500 due to the inflation increases since the act was adopted in 1955.

Native American Arts and Crafts — Authenticity

Tony Erachio of the Council for Indigenous Arts and Culture gave a detailed presentation to the committee explaining the manner in which non-authentic arts and crafts items are presented to the public and showed examples of how difficult it is to distinguish between items made of natural materials as opposed to synthetic materials. Nina Alexander of the Indian Arts and Crafts Board of the federal Department of Interior explained the work her agency is doing in the area of

controlling the sale of non-genuine Native American arts and crafts. Karl R. Gillson, district attorney, Eleventh Judicial District, provided a detailed narrative of the prosecution of Amro Al-Assi, formerly of the Silver Bear Trading Company in Gallup. He specifically noted that the prosecution was as a fourth degree fraud rather than a violation of the state Indian Arts and Crafts Sales Act due to the minimal penalties provided for in that act. William S. Keller, assistant attorney general with the Consumer Protection Division, briefed the committee on the penalties of the Indian Arts and Crafts Sales Act compared to the general fraud statutes. The presentation included recommendations to amend the penalties in the Indian Arts and Crafts Sales Act to penalties similar to those provided for pursuant to the general fraud statutes. He noted that the felony threshold set forth in the Indian Arts and Crafts Sales Act is impossibly high to charge, as transaction of \$20,000 or more involving incidents of Native American arts and crafts are very rare.

Following the presentation regarding the authenticity of Native American arts and crafts, Representative Madalena recessed the meeting at 4:32 p.m.

Tuesday, August 12 — Bahasti'ah (Twin Lakes) Chapter House

The third meeting of the Indian Affairs Committee for the 2008 interim was called back into session by Senator Pinto, co-chair, on Tuesday, August 12, 2008, at 9:20 a.m. at the chapter house of the Bahasti'ah (Twin Lakes) Chapter. The members of the committee introduced themselves, as did the members of the audience.

Bahasti'ah (Twin Lakes) Chapter, Navajo Nation — Status Update

Notah Barney, vice president of the Bahasti'ah Chapter, and Christine Sam-Barney, community services coordinator of the Bahasti'ah Chapter, presented a status update regarding the chapter. They provided a history of the chapter and discussed the rise in population from the 2000 census report. The chapter had a population of 2,251 in 2000, but, according to the presenters, that number has risen at least 15 percent since then. As a result of this population increase and the obsolete condition of the current governmental office complex, the chapter is moving forward in an attempt to secure funds for a new complex, estimated to cost \$1.4 million. Mr. Barney and Ms. Sam-Barney provided figures for the allocation of funds thus far: \$50,000 in 2006, \$70,000 in 2007 and \$200,000 (with an additional \$35,000) in 2008. With other funds from the Navajo Nation, the total amount raised so far is \$1.07 million. Mr. Barney and Ms. Sam-Barney notified the committee members that the Bahasti'ah chapter would approach the legislature for supplemental funding during the 2009 legislative session. The committee members were pleased with the positive steps toward raising the funds for the governmental office complex. Upon motion by Representative Lundstrom, seconded by Senator Lovejoy, the committee voted without objection for the committee to request the Indian Affairs Department (IAD) to provide information on how to secure financing for the project from the New Mexico Finance Authority and how to use the Tribal Infrastructure Project Fund as a funding source.

Tourist Center Proposal — U.S. 491/N9

Bella Ben and Wallace Ben, Sr., of Shiprock presented a proposal to make Highway 491 a scenic and historic route leading to the development of a visitors' center, Indian market, recreational vehicle park, convenience store and rest area for the Shiprock area. They advised the committee that the estimated cost for this project, which should be conducted in phases, amounts to \$1 million. They also provided a copy of a 1993 house memorial requesting the Economic Development Department to conduct a study of economic development alternatives for the Table Mesa and Shiprock areas in San Juan County. They will be making a request in the upcoming legislative session for \$250,000 to be used for a feasibility study.

Upon motion by Representative Lundstrom, seconded by Representative Madalena, the committee voted without objection to request that the Department of Transportation and the Tourism Department conduct a feasibility study for the creation of a visitors' center in the Shiprock area, noting that the area is located in a scenic highway system. Representative Begaye also asked to add a request for the Tourism Department and others to take a tour of the Shiprock area.

Tribal Emergency Management

Jimson Joe, project manager for the Navajo Nation Department of Emergency Management, presented a report on the status of emergency management for the Navajo Nation. He stated that the chapters are not prepared for disasters and do not know how to handle them. A major concern that hinders preparation and knowledge, according to Mr. Joe, is language. There are efforts underway to translate words describing disasters and emergencies (flood, tornado and bioterrorism, for instance) into the Navajo language. Mr. Joe highlighted four areas that are priorities for emergency management, including: mitigation, preparation, response and recovery.

Johnny Johnson, a program and project specialist for the Navajo Nation Department of Emergency Management, presented the structure, goals and functions of emergency management for Crownpoint. The Crownpoint branch has three employees, including a program and project specialist, an emergency services liaison and an office assistant. Mr. Johnson discussed the same four areas Mr. Joe highlighted as priorities for emergency management: mitigation, preparation, response and recovery. Mr. Johnson said the goals of emergency management are to save lives, prevent injuries and protect property and the environment if an emergency or disaster occurs. He outlined types of disasters, such as power outages, explosions and chemical spills. The functions of emergency management in the Navajo Nation include providing effective and efficient emergency management services on a 24-hour basis within the territorial jurisdiction of the Navajo Nation, which includes seven counties in the State of New Mexico. Mr. Johnson provided budget information, with an allocation of \$375,000 for fiscal year 2009.

John Martinez, deputy director for the New Mexico Homeland Security and Emergency Management Department, presented a general overview of emergency management in the State of

New Mexico, including statutory powers, the disaster declaration process and the services provided. Mr. Martinez commented that disasters remain controlled and managed locally.

Although not on the agenda, Heather Townsend, co-chair of the legislative committee for the All Indian Pueblo Council, and Governor Pino from the Pueblo of Zia, were permitted to give a presentation. They remarked that 21 other tribes and pueblos were not included in the emergency management fund, and they both want these tribes and pueblos included. Ms. Townsend stated that the All Indian Pueblo Council will request \$10 million for this inclusion, and the council desires to create a relationship with the state and federal governments at an unprecedented scale in the country. Governor Pino asked the committee to explore this issue and stated that he desires the state to work with the tribes and pueblos.

All presenters explained the difficulty in achieving an adequate level of preparedness without proper resources and the obstacles in accessing federal grants because of the stringent requirements.

Upon motion by Representative Vaughn, seconded by Senator Pinto, the committee voted without objection to encourage the members of the New Mexico congressional delegation to address the obstacles in accessing federal grants and funding for emergency management in order for the tribes and pueblos to develop emergency management plans and increase internal work force capacity.

Invited Guests

Bahasti'ah elders Clara John and Joe Pino spoke before the committee, with Representative Begaye translating. Ms. John expressed concern about the expense of ambulance service and of recovering bodies from the morgue. She also discussed the importance of health care for the chapter. Mr. Pino outlined trouble with culverts being washed away in flooded arroyos near his home. He stated that there is a need for six culverts, and the chapter needs help financing and building those culverts.

Senator Rodriguez and Representative Lundstrom asked the staff to look into indigent funds and county help for burials and why it takes so long for the Bahasti'ah Chapter to get bodies back from the morgue. Representative Lundstrom also asked Rebecca Martinez from the IAD to assist Mr. Pino in filling out a request for assistance regarding the flooding of the arroyos.

Native American Poverty Issues — Status Update

Christina M. Stick, policy analyst for the IAD, discussed poverty in the Native American population and the work conducted by the Ad Hoc Native American Working Group. She reported that there is a significant disparity between the percentage of the population of New Mexico who are Native American (10 percent) and the percentage of Native Americans living below the federal poverty level (18.5 percent). Ms. Stick discussed food security, housing, child care, taxation, education, employment and consumer issues for Native Americans. She also outlined the working group's recommendations for those issues.

Navajo Nation Child Support Enforcement

Charissa Saavedra, director of the Child Support Enforcement Division (CSED) of the Human Services Department (HSD), gave a presentation discussing the child support program, including tribal support programs. She said that child support helps New Mexico families, as well as the state itself, by preventing and reducing poverty; promoting family self-sufficiency and child well-being; and preventing and reducing the need for public assistance. She outlined the work of her division, stating that it: locates absent parents, establishes paternity, establishes child support and medical support court orders and enforces court orders for child and medical support. Ms. Saavedra said that the Navajo Nation is operating a tribal child support program in cooperation with the U.S. Department of Health and Human Services, Administration for Children and Families and the Office of Child Support Enforcement. She said that the CSED has entered into a joint powers agreement with the Navajo Nation and provided statistics of funding, cases and services.

Pierette Baldwin-Gumbrecht, program supervisor with the Navajo Nation Department of Child Support Enforcement, discussed the background and status of child support enforcement for the Navajo Nation. She provided the committee with statistics regarding funding and caseloads. The use of services for data enforcement by the Navajo Nation is provided at the same cost the HSD is charged for the service. Also, the HSD was appropriated \$40,000 to help the Navajo Nation meet the costs for the use of the data service. The money will be tripled by federal matching funds.

Low Income Housing Energy Assistance Program (LIHEAP)

Cathy Sisneros, bureau chief of work and family support, Income Support Division, HSD, presented the status of LIHEAP and its functions in the Navajo Nation. She discussed the challenges LIHEAP faces, including arrearages from last winter's high cost of home heating; paying for summer cooling; and asking consumers to prepare for next winter by pre-buying propane and other bulk fuels. Ms. Sisneros provided statistics regarding national recipients of LIHEAP and New Mexico figures. In 2008, there have been 62,455 recipients to date, compared to 62,269 in all of 2007. She provided funding statistics for national and state funding, as well as New Mexico tribal federal funding.

Sherry Dinezzle, who is with block grants/special projects from the Navajo Nation Division of Social Services, presented a report on LIHEAP for the Navajo Nation. She said the Navajo Nation LIHEAP intends to assist low-income households in meeting their home energy needs for heating, cooling, crisis situations and weatherization. The assistance includes, but is not limited to, wood, coal, butane, heating oil, propane, natural gas and other energy-related assistance. Ms. Begay stated that allocation is divided among the six regions of the Navajo Nation based on the 2000 census, with each region having chapters. She also provided maps of the regions covered and statistics pertaining to LIHEAP. Ms. Begay said the Navajo Nation would be requesting additional funding to defray the high cost of heating, would ask for more

flexibility for the funds and would like the funds in a lump sum in July or August to ensure the availability of money for the winter months. Upon inquires by the committee, Ms. Dinezzle indicated that delivery of services by her agency averaged three months after receipt of a LIHEAP application from a member of the Navajo Nation.

Following the presentation regarding LIHEAP, Representative Madalena recessed the meeting at 4:30 p.m.

Wednesday, August 13 — Navajo Nation Museum, Window Rock, Arizona

The third meeting of the Indian Affairs Committee for the 2008 interim was called back into session by Senator Pinto, co-chair, on Wednesday, August 13, 2008, at 9:17 a.m. at the Navajo Nation Museum in Window Rock, Arizona.

Status of New Mexico Capital Outlay Appropriations

Alvin H. Warren, secretary of Indian affairs, and Rebecca Martinez, capital outlay manager for the IAD, gave a presentation to the committee pertaining to the status of New Mexico capital outlay appropriations for the Navajo Nation. Secretary Warren stressed that the issues the Navajo Nation faces regarding capital outlay are not unique, and all the tribes and pueblos are affected as well. Ms. Martinez provided a status update on the capital outlay process for the Navajo Nation. Although challenges are present, she commended the nation for its current efforts to streamline and improve the process and work toward improvements of the system. She said that in 2008, state funding to the New Mexico tribes totaled \$20,983,000 and provided statistics for previous years, including 2007's \$30,324,957. The Navajo Nation received \$4,010,000 in 2008 for 55 projects and has received \$48,810,432 since 2004. The challenges Ms. Martinez cited include: the joint powers agreement process requiring three state agencies' approval; how capital outlay is limited to reimbursements; the delay in processing scopes of work and joint powers agreements; and expiration of projects where funds could have been reauthorized. She also discussed what the IAD is doing to address problems, including: improved monitoring, compliance and quarterly reporting; establishment of a work group that has met 41 times since August 2005 to reconcile information about projects, address reversions and discuss ways to improve the process; increased training and technical assistance at the chapter level; and converting the joint powers agreement to grant agreements to expedite the contract process.

Representative Lundstrom asked if the IAD has a comprehensive list or chart of all the funds budgeted for Native Americans from all state agencies, including purposes, monetary amounts and deadline dates. Secretary Warren said that would be a great resource, but the IAD lacks the resources and staff to compile such a list. Upon motion by Representative Lundstrom, seconded by Representative Rodella, the committee voted without objection to send a letter to the Legislative Finance Committee and to the governor urging them to instruct all state agencies to identify projects and programs for Native Americans and to help get a list or chart compiled. Upon motion by Representative Begaye, seconded by Senator Lovejoy, the committee voted

without objection to write a letter to the president and vice president of the Navajo Nation and to the speaker of the Navajo Nation Council urging the review by a single council committee and adoption of a single joint powers agreement for all Navajo Nation capital outlay projects approved each year.

Patsy Trujillo, deputy secretary of the Aging and Long-Term Services Department (ALTSD), discussed capital outlay appropriations for the ALTSD. She said that capital project requests are submitted to the ALTSD in each of the senior programs' respective regions. Capital project funding requests are simultaneously prioritized by the department and the Area Agencies on Aging using established criteria. According to Ms. Trujillo, the final aging network capital projects recommendations go to the legislature as the aging network package. She provided capital outlay priority criteria; appropriation amounts for five years; and a list of pending contracts and all active projects. She noted that \$1,360,809.68 in capital outlay appropriations for the Navajo Nation had reverted over the past five years. Upon motion by Representative Begaye, seconded by Senator Lovejoy, the committee voted without objection to send a letter to the secretary of aging and long-term services urging the expansion of the department's capital outlay staff.

Navajo Nation Capital Outlay Process

Stanley Yazzie, deputy director of the Division of Community Development for the Navajo Nation Council, thanked the committee for its service to the Navajo Nation and introduced Casey Begaye, manager of the Capital Improvement Office of the Navajo Nation. Mr. Begaye provided two recommendations for the legislature to help with the capital outlay process. First, the scope of funding needs to be broadened to include planning, designing, purchasing, equipping and maintaining. Second, the scrutiny and time frames for project completions are too strenuous and often prove to be unrealistic. Upon motion by Senator Lovejoy, seconded by Representative Lundstrom, the committee approved without objection to write a letter to the president, vice president and speaker to encourage a streamlined, efficient and shortened process for certification of LIHEAP applications. Upon motion by Representative Begaye, seconded by Senator Lovejoy, the committee approved without objection to write a letter to the president and vice president of the Navajo Nation about the discussion of capital outlay procedures, such as scope of work modification, and encourage approval for the projects by a single legislative committee.

Discussion of Alternatives for Improvements in the Capital Outlay Process

The committee discussed the need for continued communication and dialogue with the Navajo Nation to improve the delivery of capital outlay funds to the Navajo chapters in New Mexico.

Adjournment

There being no further business before the committee, the third meeting of the Indian Affairs Committee for the 2008 interim was adjourned at 3:05 p.m.